

Executive Summary – Enforcement Matter – Case No. 48357
James A. Hernandez dba Zebra Show Bar
RN105449151
Docket No. 2014-0321-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Zebra Show Bar, 7700 South Desert Boulevard, Anthony, El Paso County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 10, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$706

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$706

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 17, 2014

Date(s) of NOE(s): January 31, 2014

Executive Summary – Enforcement Matter – Case No. 48357
James A. Hernandez dba Zebra Show Bar
RN105449151
Docket No. 2014-0321-PWS-E

Violation Information

1. Failed to post public notifications of the failure to collect routine distribution water samples for the months of December 2012 and June 2013 [30 TEX. ADMIN. CODE § 290.122(c)(2)(A)].
2. Failed to collect the annual nitrate sample and provide the results to the Executive Director for the 2012 and 2013 monitoring periods [30 TEX. ADMIN. CODE § 290.106(c) and (e)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days:
 - i. Implement improvements to procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility including but not limited to providing public notification for the failure to collect routine samples; and
 - ii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical samples are collected by the Facility's laboratories and reported to the Executive Director within ten days of Executive Director request or of their receipt by the Facility, whichever is later.
- b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

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Docket No. 2014-0321-PWS-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jacquelyn Green, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2587; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: James A. Hernandez, Owner, Zebra Show Bar, 2415 Montana Avenue,
El Paso, Texas 79903

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	3-Feb-2014	Screening	14-Feb-2014	EPA Due	30-Jun-2014
	PCW	14-Feb-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	James A. Hernandez dba Zebra Show Bar		
Reg. Ent. Ref. No.	RN105449151		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	48357	No. of Violations	2
Docket No.	2014-0321-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jacquelyn Green
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$400

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **60.0%** Enhancement **Subtotals 2, 3, & 7** \$240

Notes: Enhancement for three NOV's with same/similar violations, one order with denial of liability, and one order without denial of liability.

Culpability **No** **0.0%** Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$0

Economic Benefit **0.0%** Enhancement* **Subtotal 6** \$0

Total EB Amounts \$74
Approx. Cost of Compliance \$260
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$640

OTHER FACTORS AS JUSTICE MAY REQUIRE **10.3%** **Adjustment** \$66

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs associated with Violation Nos. 1 and 2.

Final Penalty Amount \$706

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$706

DEFERRAL **0.0%** Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY \$706

Screening Date 14-Feb-2014

Docket No. 2014-0321-PWS-E

PCW

Respondent James A. Hernandez dba Zebra Show Bar

Policy Revision 3 (September 2011)

Case ID No. 48357

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105449151

Media [Statute] Public Water Supply

Enf. Coordinator Jacquelyn Green

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 60%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for three NOVs with same/similar violations, one order with denial of liability, and one order without denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 60%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 60%

Screening Date 14-Feb-2014

Docket No. 2014-0321-PWS-E

PCW

Respondent James A. Hernandez dba Zebra Show Bar

Policy Revision 3 (September 2011)

Case ID No. 48357

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105449151

Media [Statute] Public Water Supply

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.122(-)(2)(A)

Violation Description

Failed to post public notifications of the failure to collect routine distribution water samples for the months of December 2012 and June 2013.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 2

180 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

Two single events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$177

This violation Final Assessed Penalty (adjusted for limits) \$177

Economic Benefit Worksheet

Respondent James A. Hernandez dba Zebra Show Bar
Case ID No. 48357
Reg. Ent. Reference No. RN105449151
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	17-Jan-2014	11-Nov-2014	0.82	\$4	n/a	\$4
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to implement improvements to the Facility's process procedures, guidance, training and/or oversight to ensure that public notification is posted and reported to the Executive Director, calculated from the date of the record review to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$10	1-Jan-2013	30-Sep-2013	1.66	\$1	\$10	\$11

Notes for AVOIDED costs

The avoided cost includes the estimated amount to post public notification (\$5 per notice), calculated for the period when public notification was not posted.

Approx. Cost of Compliance

\$110

TOTAL

\$15

Screening Date 14-Feb-2014

Docket No. 2014-0321-PWS-E

PCW

Respondent James A. Hernandez dba Zebra Show Bar

Policy Revision 3 (September 2011)

Case ID No. 48357

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105449151

Media [Statute] Public Water Supply

Enf. Coordinator Jacquelyn Green

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.106(c) and (e)

Violation Description

Failed to collect the annual nitrate sample and provide the results to the Executive Director for the 2012 and 2013 monitoring periods.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to collect annual nitrate samples could expose customers of the Facility to undetected contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 2

730 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$300

Two annual events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$300

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$530

This violation Final Assessed Penalty (adjusted for limits) \$530

Economic Benefit Worksheet

Respondent James A. Hernandez dba Zebra Show Bar

Case ID No. 48357

Reg. Ent. Reference No. RN105449151

Media Public Water Supply

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description No. comment or \$						

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)	\$100	17-Jan-2014	11-Nov-2014	0.82	\$4	\$4

Notes for DELAYED costs

The delayed cost includes the estimated amount to implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical sample results are taken by the Facility's laboratories and reported to the Executive Director, calculated from the date of the record review to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$50	1-Jan-2012	31-Jan-2013	2.00	\$5	\$55
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to collect and have analyzed chemical analysis samples (\$25 for nitrate), calculated for the time frame nitrate sampling was required.

Approx. Cost of Compliance

\$150

TOTAL

\$59

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN604514984, RN105449151, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604514984, James A. Hernandez **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN105449151, ZEBRA SHOW BAR **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 7700 South Desert Boulevard in Anthony, El Paso County, Texas

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
0710189

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: March 27, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 27, 2009 to March 27, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Jacquelyn Green

Phone: (512) 239-2587

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 06/26/2010 ADMINORDER 2009-1943-PWS-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
Rqmt Prov:OP 2.b.ii. ORDER
Description: Failed to develop and maintain an up-to-date chemical and microbiological monitoring plan.
Classification: Major
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(G)
Rqmt Prov:OP 2.c.i. ORDER
Description: Failed to conduct a physical and chemical analysis of water produced from a new well.
Classification: Major
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
Rqmt Prov:OP 2.c.iv. ORDER
Description: Failed to seal the wellhead with a gasket or sealing compound.
Classification: Major
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(Q)

Rqmt Prov:OP 2.c.v. ORDER

Description: Failed to properly install an air release device on the discharge piping of the well in such a manner to

preclude the possibility of submergence or entrance of contaminants.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(iii)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(i)

Rqmt Prov:OP 2.c.vii. ORDER

Description: Failed to provide water system records to Commission personnel at the time of the investigation.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)

Rqmt Prov:OP 2.c.viii. ORDER

Description: Failed to maintain plans, specifications, maps, and other pertinent information on file.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(A)

Rqmt Prov:OP 2.c.ix. ORDER

Description: Failed to conduct an annual inspection of the ground storage tank.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(7)

Rqmt Prov:OP 2.e.ii. ORDER

Description: Failed to properly cover the air release device in the middle of the discharge line with a 16-mesh or finer corrosion-resistant screen to preclude the possibility of submergence or entrance of contaminants.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.44(a)(4)

Rqmt Prov:OP 2.e.iii. ORDER

Description: Failed to locate the water line a minimum of 24 inches below the ground surface.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.40(a)
30 TAC Chapter 290, SubChapter D 290.46(a)
5A THSC Chapter 341, SubChapter A 341.035(a)

Rqmt Prov:OP 2.e.iv. ORDER

Description: Failed to obtain approval by the Executive Director for the construction of a public water system.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)

Description: Failed to enclose the well with an intruder-resistant fence or lockable ventilated well house.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(A)

Description: Failed to locate the Facility's well at least 150 feet away from a septic tank perforated drainfield.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(B)

Rqmt Prov:2008-0546-PWS-E OP 2.c.ix ORDER

Description: Failed to conduct annual inspections of the three pressure tanks.

2

Effective Date: 02/20/2011 ADMINORDER 2010-1075-PWS-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation Mar 2008 thru Dec 2008. Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation Mar 2008 thru Dec 2008. Failure to post public notice for not collecting any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation Jan 2009 thru Dec 2009. Failure to collect any routine monitoring sample(s).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation Jan 2009 thru Dec 2009. Failure to post public notice for not collecting any routine monitoring sample(s).
Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)

Description: TCR Routine Monitoring Violation Jan 2010 thru Apr 2010. Failure to collect any routine monitoring sample(s).
Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation Jan 2010 thru Apr 2010. Failure to post public notice for not collecting any routine monitoring sample(s).

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	May 19, 2009	(745573)
Item 2	March 02, 2010	(791207)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- | | | | |
|---|---|--------------------------|--|
| 1 | Date: 04/25/2013 (1145478) | CN604514984 | |
| | Self Report? NO | Classification: Moderate | |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f) | | |
| | Description: DEC/2012 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 12/2012. | | |
| 2 | Date: 10/21/2013 (1145478) | CN604514984 | |
| | Self Report? NO | Classification: Moderate | |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f) | | |
| | Description: JUNE/2013 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 06/2013. | | |
| 3 | Date: 11/25/2013 (1145478) | CN604514984 | |
| | Self Report? NO | Classification: Moderate | |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.106(c)(6)
30 TAC Chapter 290, SubChapter F 290.106(e) | | |
| | Description: NO3 MR YR2012- The system failed to monitor and/or report nitrate levels to the TCEQ for the annual monitoring period from 01/01/2012 to 12/31/2012 within the required timeline. | | |
| | Self Report? NO | Classification: Moderate | |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.106(c)(4)
30 TAC Chapter 290, SubChapter F 290.106(e) | | |
| | Description: MTL MR 3Y2012- The system failed to monitor and/or report metal levels to the TCEQ for the triennial monitoring period from 01/01/2010 to 12/31/2012 within the required timeline. | | |
| | Self Report? NO | Classification: Moderate | |
| | Citation: 30 TAC Chapter 290, SubChapter F 290.106(c)(4)
30 TAC Chapter 290, SubChapter F 290.106(e) | | |
| | Description: MIN MR 3Y2012 - The system failed to monitor and/or report mineral levels to the TCEQ for the triennial monitoring period from 01/01/2010 to 12/31/2012 within the required timeline. | | |

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Customer, Respondent, or Owner/Operator: CN604514984, James A. Hernandez

Classification: NOT APPLICABLE

Rating: N/A

Regulated Entity: RN105449151, ZEBRA SHOW BAR **Classification:** NOT APPLICABLE **Rating:** N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 3/27/2009 and 3/27/2014

- 1* Date: 04/25/2013 (1145478) CN604514984
Classification: Moderate
- Self Report? NO For Informational Purposes Only
- Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)
- Description: DEC/2012 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 12/2012.
- 2 Date: 10/21/2013 (1145478) CN604514984
Classification: Moderate
- Self Report? NO For Informational Purposes Only
- Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)
- Description: JUNE/2013 TCR Routine MR PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct routine coliform monitoring for the month of 06/2013.
- 3 Date: 11/25/2013 (1145478) CN604514984
Classification: Moderate
- Self Report? NO For Informational Purposes Only
- Citation: 30 TAC Chapter 290, SubChapter F 290.106(c)(6)
30 TAC Chapter 290, SubChapter F 290.106(e)
- Description: NO3 MR YR2012- The system failed to monitor and/or report nitrate levels to the TCEQ for the annual monitoring period from 01/01/2012 to 12/31/2012 within the required timeline.
- Classification: Moderate
- Self Report? NO For Informational Purposes Only
- Citation: 30 TAC Chapter 290, SubChapter F 290.106(c)(4)
30 TAC Chapter 290, SubChapter F 290.106(e)
- Description: MTL MR 3Y2012- The system failed to monitor and/or report metal levels to the TCEQ for the triennial monitoring period from 01/01/2010 to 12/31/2012 within the required timeline.
- Classification: Moderate
- Self Report? NO For Informational Purposes Only
- Citation: 30 TAC Chapter 290, SubChapter F 290.106(c)(4)
30 TAC Chapter 290, SubChapter F 290.106(e)
- Description: MIN MR 3Y2012 - The system failed to monitor and/or report mineral levels to the TCEQ for the triennial monitoring period from 01/01/2010 to 12/31/2012 within the required timeline.

* NOVs applicable for the Compliance History rating period 9/1/2008 to 8/31/2013

Appendix B

All Investigations Conducted During Component Period March 27, 2009 and March 27, 2014

- (745573)
- Item 1* May 19, 2009** For Informational Purposes Only
- (778730)
- Item 2 November 16, 2009** For Informational Purposes Only
- (791207)
- Item 3* March 02, 2010** For Informational Purposes Only

(824304)

Item 4 June 21, 2010** For Informational Purposes Only

(942997)

Item 5 July 25, 2011** For Informational Purposes Only

(1145478)

Item 6 January 29, 2014 For Informational Purposes Only

(1145556)

Item 7 January 31, 2014 For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2008 and 08/31/2013.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
JAMES A. HERNANDEZ DBA ZEBRA	§	
SHOW BAR	§	
RN105449151	§	ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2014-0321-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding James A. Hernandez dba Zebra Show Bar (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply system located at 7700 South Desert Boulevard in Anthony, El Paso County, Texas (the "Facility") that has approximately one service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on January 17, 2014, TCEQ staff documented that notification of the failure to collect routine distribution water samples was not posted for the months of December 2012 and June 2013.
3. During a record review conducted on January 17, 2014, TCEQ staff documented that the annual nitrate samples for the 2012 and 2013 monitoring periods were not collected and the results were not provided to the Executive Director.
4. The Respondent received notice of the violations on February 3, 2014.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to post public notifications of the failure to collect routine distribution water samples for the months of December 2012 and June 2013, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(A).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to collect the annual nitrate sample and provide the results to the Executive Director for the 2012 and 2013 monitoring periods, in violation of 30 TEX. ADMIN. CODE § 290.106(c) and (e).
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Seven Hundred Six Dollars (\$706) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Seven Hundred Six Dollar (\$706) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Seven Hundred Six Dollars (\$706) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: James A. Hernandez dba Zebra Show Bar, Docket No. 2014-0321-PWS-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Implement improvements to procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility including but not limited to providing public notification for the failure to collect routine samples, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
 - ii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical samples are collected by the Facility's laboratories and reported to the Executive Director within ten days of Executive Director request or of their receipt by the Facility, whichever is later, in accordance with 30 TEX. ADMIN. CODE § 290.106 (Inorganic Contaminants).
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a.i and 2.a.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Moncrief
For the Executive Director

11/25/14
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of James A. Hernandez dba Zebra Show Bar. I am authorized to agree to the attached Agreed Order on behalf of James A. Hernandez dba Zebra Show Bar, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, James A. Hernandez dba Zebra Show Bar waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

* [Signature]
Signature

* 11/25/14
Date

* JAMES A HERNANDEZ
Name (Printed or typed)
Authorized Representative of
James A. Hernandez dba Zebra Show Bar

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.